

clearly requires the petition to be filed by "a State". The legislative history of Section 332(c)(3) also consistently uses the phrase "a State" when discussing the petition process.<sup>45/</sup> Different states have a multitude of procedures for executive departments and/or independent agencies to take action, and there may be different views among responsible agencies within the same state. The Commission should not be placed in the position of having to determine whether a petition is properly authorized by the State itself. The sponsor of a state's petition should demonstrate that it has been duly authorized by order or consent of all interested agencies or departments, or, preferably, by state legislation directing the appropriate agency to file the petition.

2. A state petition should identify the specific existing or proposed rules that the state wishes to have imposed on CMS providers. Section 332(c)(3) permits a state to regulate only rates, not entry. Certain types of requirements, such as ongoing financial qualifications, could be viewed as "entry" or otherwise, depending on how they are specifically written. The Commission cannot properly evaluate the petition under the statutory criteria unless it is informed as to what the regulations the state seeks to implement are. Full disclosure will also provide interested

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<sup>45/</sup> House Report at 261 (section "permits states to petition the Commission for authority to regulate rates"); Conference Report at 493 (discussing procedures to be followed "if the State files a petition"). Compare the preceding sentence in Section 332(c)(3), which states that CMS providers are not exempt from "requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates." (Emphasis added.)

parties fair notice of the specific rules they may become subject to should the petition be granted. If a state seeks to retain existing regulation, its Petition should identify those rules it wishes to enforce. If the state wants to initiate rate regulation, the proposed rules should be presented to the Commission.

3. If a state petitions to retain or impose regulation on some but not all commercial mobile services, it must provide specific facts justifying unequal treatment. A petition which does not contain this showing would not be accepted. And the Commission should not approve a petition which regulates some but not all services without making specific findings that disparate regulation is warranted. This will give force to Congress's intent that the Commission, in considering state petitions, "shall ensure that such regulation is consistent with the overall intent of this subsection as implemented by the Commission, so that, consistent with the public interest, similar services are accorded similar regulatory treatment." Conference Report at 494 (emphasis added).

4. The petition process should incorporate Congress' directive that it be expedited. The Commission should place any state petition on public notice immediately upon receipt, and allow 30 days for comment. The state would have 15 days to reply to any comments. No further pleadings would be allowed. This process will afford interested parties a full opportunity to comment, while enabling the Commission to complete action within the statutory deadlines.

CONCLUSION

Congress has provided the Commission with a landmark opportunity to establish a new regulatory structure for the commercial mobile services industry. Congress intended that this new structure promote parity and remove regulatory burdens that are inappropriate for a competitive and changing industry. At the same time, the Commission should modify and retain those rules which are necessary to preserve evenhanded treatment of competing providers. Bell Atlantic's recommendations are consistent with these goals. It urges the Commission to resolve all issues the Notice raises together in order to implement Congress' intent.

Respectfully submitted,

THE BELL ATLANTIC COMPANIES

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Dated: November 8, 1993

## APPENDIX 1

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. P-100, SUB 114

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Exemption of Domestic Public Cellular	)	ORDER EXEMPTING DOMESTIC
Radio Telecommunications Service Providers	)	PUBLIC CELLULAR RADIO
from Regulation Under Chapter 62 of the North	)	TELECOMMUNICATIONS SERVICE
Carolina General Statutes	)	PROVIDERS FROM REGULATION

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 21, 22, and 26, 1991

BEFORE: Commissioner Allyson K. Duncan, Presiding; and Chairman William W. Redman, Jr., and Commissioners Sarah Lindsay Tate, Julius A. Wright, Robert O. Wells, Charles H. Hughes, and Laurence A. Cobb

APPEARANCES:

For GTE Mobile Communications Incorporated, Contel Cellular Company, General Cellular Corporation, Blue Ridge Cellular Telephone Company, and G.M.D. Limited Partnership:

Henry C. Campen, Jr., and J. Allen Adams, Attorneys at Law, Parker, Poe, Adams and Bernstein, One Exchange Plaza, Post Office Box 389, Raleigh, North Carolina 27602

For Centel Cellular Company, N.C. RSA-2 Cellular Telephone Company, and N.C. RSA-3 Cellular Telephone Company:

Robert F. Page, Attorney at Law, Crisp, Davis, Schwentker, Page, Currin & Nichols, 4011 Westchase Boulevard, Suite 400, Raleigh, North Carolina 27607

For Metro Mobile CTS of Charlotte, Inc.:

Robert W. Kaylor, Attorney at Law, Patterson, Dilthey, Clay, Cranfill, Sumner & Hartzog, 225 Hillsborough Street, Suite 300, Post Office Box 310, Raleigh, North Carolina 27602

For ALLTEL Mobile Communications and United States Cellular Corporation:

F. Kent Burns and Daniel C. Higgins, Attorneys at Law, Burns, Day & Presnell, 2626 Glenwood Avenue, Suite 560, Post Office Box 10867, Raleigh, North Carolina 27605

For Cellcom of Hickory, Inc.:

James P. Cooney III, Attorney at Law, Kennedy, Covington, Lobdell & Hickman, 3300 NCNB Plaza, Charlotte, North Carolina 28280

For North Carolina Cellular Association, Inc.:

Ralph McDonald and Cathleen M. Plaut, Attorneys at Law, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602

For Carolina Telephone and Telegraph Company:

Jack H. Derrick, Sr., Senior Attorney, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For Eastern Radio Service, Inc.:

Edward S. Finley, Jr., Attorney at Law, Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For the Attorney General:

Karen Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602  
For: The Using and Consuming Public

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520  
For: The Using and Consuming Public

BY THE COMMISSION: On May 13, 1991, the North Carolina General Assembly enacted legislation authorizing the Commission, to the extent it finds such services to be competitive and such action to be in the public interest, to exempt domestic cellular radio telecommunications providers (cellular carriers), if licensed by the Federal Communications Commission (FCC), from regulation under any and all of the provisions of Chapter 62 of the North Carolina General Statutes.

On May 24, 1991, GTE Mobile Communications Incorporated, Centel Cellular Company, ALLTEL Mobile Communications, United States Cellular Corporation, Metro Mobile CTS of Charlotte, Inc., General Cellular Corporation, Cellcom of Hickory, Inc., Contel Cellular Company, Blue Ridge Cellular Telephone Company, G.M.D. Limited Partnership, N.C. RSA-2 Cellular Telephone Company, and N.C. RSA-3 Cellular Telephone Company (Joint Petitioners) filed a generic proceeding pursuant to the legislation cited above seeking an Order from the Commission exempting cellular carriers from regulation under Chapter 62 of the General Statutes (Joint Petition).

On May 31, 1991, the Attorney General filed Preliminary Comments requesting that the comment period be set for 45 days, that notice be given by newspaper publication and by bill insert and suggesting that it was too soon for the Commission to give up its regulatory authority over cellular service complaints. The Attorney General suggested that the Commission follow the model of Electric Membership Corporations (EMCs) with respect to the retention of complaint jurisdiction.

On June 7, 1991, the Public Staff filed a response to the Preliminary Comments of the Attorney General. The Public Staff argued that the EMC model suggested by the Attorney General was inappropriate for cellular carriers, that the FCC has provided for competitive services in each cellular service area and urged the Commission not to retain complaint jurisdiction over cellular carriers.

On June 10, 1991, the Joint Petitioners filed a Reply to the Preliminary Comments of the Attorney General opposing the suggestions made by the Attorney General.

On June 19, 1991, the Commission issued an Order Requiring Public Notice seeking comments by interested parties with respect to the petition. The Order provided a 30-day period within which interventions and comments were to be received.

On July 11, 1991, Carolina Telephone and Telegraph Company filed a Petition to Intervene in this docket. This petition was allowed by Order dated July 17, 1991.

On July 22, 1991, the Joint Petitioners filed a motion requesting that the Commission accept as sufficient the notice published in four newspapers, which notice did not strictly conform to the Commission's Order Requiring Public Notice. The Joint Petitioners' motion was allowed by the Commission on July 30, 1991.

On August 2, 1991, the Attorney General filed a Motion for Hearing in this docket.

On August 5, 1991, the Public Staff filed Comments recommending that the Commission approve the petition and deregulate cellular service.

On August 6, 1991, the Attorney General filed a Request for an Extension of Time to make comments through and including September 6, 1991.

On August 7, 1991, the North Carolina Cellular Association (NCCA) filed a Petition to Intervene, Preliminary Comments and a Request for Hearing and Request for an Extension of Time to File Comments. In its comments, the NCCA opposed the relief sought by the Joint Petitioners.

On August 9, 1991, the Joint Petitioners filed a Response. In their response, the Joint Petitioners opposed the NCCA petition to intervene, responded to the NCCA comments and opposed the motions by the NCCA and the Attorney General for a hearing in the docket and an extension of time to file comments.

On August 13, 1991, the Commission allowed the NCCA petition to intervene and extended the time for comments to Friday, September 6, 1991.

On September 6, 1991, Eastern Radio Services, Inc., filed a Petition to Intervene, Preliminary Comments and Request on Procedure. In its petition, Eastern Radio urged the Commission to grant the relief sought by the Petitioners and requested the Commission to determine that there was no need for a hearing in this docket. Eastern Radio's petition to intervene was granted by the Commission on September 17, 1991.

On September 26, 1991, the Commission issued an Order Setting Hearing ordering that a hearing be conducted and that it commence on November 20, 1991.

On October 31, 1991, the Commission issued an Order Setting Date for Rebuttal Testimony requiring that parties prefile any rebuttal testimony no later than Friday, November 15, 1991.

On November 4, 1991, the NCCA filed a Motion to Continue and a Motion to Enlarge the Scope of the Proceeding. The NCCA requested that the Commission extend the time within which to prefile testimony by 60 days and continue the hearing to a later date. With respect to scope, NCCA argued that the Commission should enlarge the scope of the proceeding to determine whether bundling of cellular customer premises equipment (CPE) with cellular transmission service is lawful and in the public interest.

On November 5, 1991, Centel Cellular Company, one of the Petitioners, filed a response opposing the NCCA Motion to Continue and Motion to Enlarge the Scope of the Proceeding. On the same date, the remainder of the Joint Petitioners filed a response opposing both NCCA motions. On November 6, 1991, the NCCA filed a Reply to the responses filed by the Joint Petitioners. On that date, the Attorney General filed a separate Motion to Continue and to Enlarge the Scope of the Proceeding supporting the NCCA motions of November 5, 1991.

On November 7, 1991, the Commission issued an Order Denying Motion to Continue and Addressing Scope. The Commission's Order granted the NCCA an extra week in which to prefile testimony of all of its witnesses and postponed until the week after the commencement of the hearing the time for hearing testimony by the NCCA expert witness. The Commission concluded that the scope of the hearing should not be enlarged to the extent requested by the NCCA and Attorney General. However, the Commission ordered that the effect of bundling without a tariff filing could be considered at the hearing. In its Order, the Commission also propounded the following four questions concerning Wide Area Call Reception (WACR) authority:

- a. Whether under the Joint Petitioners' proposal cellular companies offering WACR will continue to need to obtain authority from the Commission to do so.
- b. Whether under the Joint Petitioners' proposal cellular companies utilizing IXCs for long-distance cellular traffic but which charge their customers more than a pass-through amount will continue to need or obtain



authority from the Commission to do so.

- c. Whether under the Joint Petitioners' proposal cellular companies offering WACR over their own facilities should still be forbidden to carry non-WACR traffic over those facilities.

On November 15, 1991, the Commission issued an Order Concerning Rebuttal Testimony rescinding its October 31, 1991, Order on rebuttal testimony and requiring the Joint Petitioners to file rebuttal testimony by November 22, 1991.

On November 15, 1991, the NCCA filed a Motion for Reconsideration of Order Addressing Scope. Citing several FCC cases, the NCCA argued that the practice of bundling was prohibited by the FCC and that the states are preempted by the FCC from permitting bundling. While acknowledging that the Commission had approved several bundled cellular tariffs, the NCCA argued that merely allowing these tariffs to become effective was not in and of itself a determination by the Commission that bundling is lawful in North Carolina.

On November 19, 1991, the Joint Petitioners filed response to the questions propounded by the Commission in its November 7, 1991, Order.

The hearing commenced on November 20, 1991. The Commission first heard oral argument on the NCCA motion for reconsideration. The motion was denied.

The Attorney General offered the following public witnesses: Mr. Ole Madsen, Ms. Judy Ward, Ms. Lisa Burney, Mr. Charles G. England, and Mr. Rod Birdsong.

Thereafter, the following witnesses offered testimony and exhibits on behalf of the Joint Petitioners: Mr. Dwayne R. Nichols, Vice President and General Manager of Snyder Telecom, Inc.; Mr. Donald E. Steely, Senior Vice President - Administration of ALLTEL Mobile Communications, Inc.; Michael F. Altschul, Esquire, General Counsel, Cellular Telecommunications Industry Association; Mr. Russell E. Patridge, Vice President/General Manager, GTE Mobilnet-Southeast; Mr. Jack Plating, Vice President, Southeast Region, Metro Mobile CTS of Charlotte, Inc.; Mr. Robert M. Curran, Regional Vice President, Centel Cellular Company; Mr. Randy Jenkins, Director of Partnership Relations and Regulatory Affairs, United States Cellular Corporation; and Dr. Jerry A. Hausman, Professor of Economics, Massachusetts Institute of Technology.

Mr. Jack Bailey, President of Eastern Radio Services, testified on behalf of Intervenor Eastern Radio.

Ms. Lynn Ward, Sales Representative/General Manager, Car Phones Incorporated; Mr. Allen L. Guin, Jr., Two-Way Radio of North Carolina, Inc.; Mr. Tony Lilley, Car Cellular, Inc.; and Dr. J. Carl Poindexter, Professor of Economics, North Carolina State University, all testified on behalf of Intervenor NCCA.

Ms. LuAnn Lenz testified on behalf of the Public Staff Communications Division.

Witnesses Curran, Patridge and Hausman offered rebuttal testimony on behalf of the Joint Petitioners.

The hearing recessed on Friday, November 21, 1991, and reconvened on Tuesday, November 26, 1991, for the purpose of hearing the testimony of Dr. Poindexter and rebuttal testimony of witnesses Currin, Patridge and Hausman. The hearing concluded on November 26, 1991.

Based upon the foregoing, the testimony and exhibits offered into evidence at the hearing, and the entire record in this proceeding, the Commission now makes the following

#### FINDINGS OF FACT

1. Joint Petitioners are domestic public cellular radio telecommunications service providers licensed by the FCC. Petitioners are certificated by this Commission to offer cellular service within their respective cellular geographic service areas (CGSA).

2. The provision of cellular service in North Carolina is competitive.

3. The bundling of cellular service with cellular CPE is in the public interest, so long as both the CPE and cellular service can also be purchased separately.

4. The exemption of cellular carriers from regulation under Chapter 62 of the North Carolina General Statutes is in the public interest. However, the exemption should not extend to the following matters: (1) the rates, terms and conditions of interconnection between cellular carriers and local exchange companies and other telecommunications services providers regulated by the Commission and (2) the provision of land-to-land telecommunications services by cellular carriers. The Commission should reserve the right to reassert its jurisdiction over cellular carriers on petition of any interested party for good cause shown.

5. The same exemption from regulation by the Commission afforded cellular carriers should be extended to those who resell cellular service from cellular carriers.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding of fact is contained in the filings of the Joint Petitioners. This finding is largely procedural and jurisdictional and was not contested.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The FCC established the two-firm market structure with the objective of ensuring an effective degree of competition while providing for the efficient use of the limited radio spectrum available for cellular service. By definition, a duopoly market is not perfectly competitive. On the other hand, the Commission concludes that the mere fact that a market is a duopoly does not mean that it

cannot be effectively competitive. In his testimony, witness Hausman gave examples of market-created duopolies that are very competitive, e.g., the microprocessing industry--Intel and Motorola. Cellular carriers presently have excess capacity (i.e., capacity to handle additional subscribers), and technological innovations (e.g., cell splitting) on the horizon promise continued excess capacity. The Commission believes that these factors promote competition in the duopoly structure.

The Commission concludes that while there is no rote formula for determining whether a market is competitive, there are a number of indicia of competitiveness. The Joint Petitioners presented evidence of competition among cellular carriers on quality, price, and service.

Witness Patridge testified that GTE Mobilnet increased the number of cell sites in its Raleigh/Durham market by 64% in the past two years and that this level of increase was typical of the five other GTE Mobilnet markets in North Carolina. The cost of these sites and other capital investment in its network in North Carolina resulted in a total investment by GTE of \$24 million in 1991 in the southeast region. (North Carolina represents 75% of GTE's southeast region.) Witness Patridge testified that this investment was necessary to improve the quality of GTE's cellular service. He testified that this investment was motivated by competitive factors. The Commission believes that this and other testimony is evidence of competition in the area of service quality within the cellular service industry.

With respect to price competition, witness Hausman testified that he had conducted a study of cellular prices in North Carolina and found them to be competitive. The NCCA agreed that current cellular service prices in North Carolina are competitive. Cellular carriers compete by way of special promotions which offer discounts on cellular service. The increase in the number of price plans offered by cellular carriers is further evidence of price competition. The fact that some cellular carriers discount cellular CPE as an incentive to prospective customers is also evidence of price competition. Despite the contention by the NCCA and the Attorney General that there is no head-to-head price competition in cellular service, witness Patridge testified that GTE lowered its prices in 1991 in direct response to new service plans introduced by its competitor, Centel Cellular.

Witness Poindexter offered evidence purporting to show that cellular service prices in North Carolina are closely matched and testified that closely matched pricing indicated an absence of price competition. Witness Guin also testified that cellular service prices tracked each other, but offered no evidence to support his testimony. By way of refutation, Joint Petitioners' expert witness Hausman testified that closely matched pricing is to be expected where services are close substitutes and consumers can switch firms as, for example, in the case with Coke and Pepsi, two soft drinks which are close substitutes and similarly priced. If one company raises its prices significantly, it will likely lose customers who will choose the less expensive substitute. The Commission concludes that there is effective price competition among cellular carriers.

Customer service is another area in which cellular carriers compete. There

was testimony from the carrier panel that the cost of obtaining a new customer is as much as \$300. Unless the customer remains a subscriber for an extended period, the company cannot recover this investment. Accordingly, cellular carriers devote substantial effort and resources to maintaining customer satisfaction. Notwithstanding these efforts, the incidence of customer "churn" (customers switching from one firm to another) is significant. Witness Hausman testified that the industry-wide percentage was as high as 25%. The Commission believes that this is an indication that customers are availing themselves of their right to choose between carriers. The Commission concludes that there is competition among cellular carriers in the area of customer service.

Motorola is the only reseller of cellular service currently active in North Carolina. The NCCA witnesses contended that the absence of an active reseller market in North Carolina is evidence of a lack of competition in the cellular industry in North Carolina and maintained that a price spread between cellular wholesale and retail prices must be mandated before effective reseller competition can exist. However, the Commission finds more persuasive witness Hausman's testimony that the success of resellers is determined purely by the size of the market and is not dependent upon the existence of the mandated price spread. Moreover, there is free access entry to cellular markets by resellers. The Commission concludes that the absence of resellers in North Carolina does not indicate a lack of competition in cellular service.

The evidence was undisputed that two cellular carriers were certificated and operating in all MSAs and more than half of the RSAs. Over 70% of the State's population is represented in these MSAs and RSAs. Witness Altschul testified that the FCC licensing procedure caused a delay in North Carolina RSAs going into service. The Commission takes judicial notice of an FCC Public Notice dated December 17, 1991, announcing that a construction permit has been issued to a non-wireline applicant in RSA NC-4. This market is one of the RSAs in which only a single carrier was licensed at the time of the hearing on this docket. The Commission believes that it is inevitable that both licensed cellular carriers will be operating in all North Carolina RSAs within a matter of months. Witness Hausman testified that the imminence of competition from a second carrier would serve as a strong influence against monopolistic behavior by carriers operating in markets where the second carrier has not yet been licensed. The Commission does not believe that the statute requires a finding that there are two facilities-based cellular carriers in service in every MSA and every RSA before it can find that cellular service is competitive. Rather, it is sufficient that most areas are being served by at least two carriers and an inexorable process is underway by which the rest will be served in the near future.

After careful consideration of the arguments and evidence presented at the hearing, the Commission concludes that the provision of cellular service in North Carolina is competitive. This conclusion is consistent with the Commission's December 6, 1991, Order Allowing Tariffs in Docket No. P-190, Sub 6, and related dockets wherein the Commission concluded that packaging tariffs are in the public interest.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

A central point in the NCCA's argument against deregulation is that it will lead to widespread bundling and that bundling is against the public interest. Because of the attention it received throughout the proceedings, the Commission deems it appropriate to make a separate finding of fact regarding bundling. At the hearing, consideration of the issue was limited to whether bundling in the absence of regulation is in the public interest.

Three terms were used during the course of the hearing in connection with this issue--bundling, packaging and tying. All three terms have to do with the joint provision of cellular CPE and service. Tying is distinguished from bundling or packaging. Under a tying arrangement, a consumer may only purchase the service by also purchasing the CPE. It was uncontested during the hearing that, with the joint provision of cellular CPE and service, consumers may purchase either CPE or service independently. Thus, there is no evidence of unlawful tying CPE and service in this docket. As between the terms bundling and packaging, the Commission believes that the term "packaging" most accurately describes the joint provision of CPE and service in North Carolina.

The Commission concludes that the principal effect of packaging is to reduce costs to consumers and offer a wider array of choices and prices to them. The Commission believes that packaging, without regulation, is unlikely to lead to anti-competitive or predatory behavior by cellular carriers. The Commission concludes that there is no evidence of anti-competitive cross-subsidization in the cellular service industry in North Carolina. Such price discrimination as may be associated with packaging is no different than that which is associated with discount sales or special promotion activity in other areas of commerce. The Commission believes that the motivation for packaging is competition within the cellular service industry.

The Commission concludes that term contracts for cellular service and the associated penalties for early termination are not anti-competitive or against the public interest. Again, such arrangements are common in commerce. There are penalties associated with early termination of leases, early withdrawal of funds deposited in certificates of deposit and so on. The overriding fact remains that consumers retain the right of choice in selecting cellular service and CPE, either on a joint basis or separately. Likewise, a consumer may choose to sign a term contract for service or receive service on a month-to-month basis.

Independent agents, such as NCCA's membership, and mass retailers of cellular CPE are beyond the purview of this Commission. The effect of the relief sought by the Joint Petitioners on agents and retailers is not a factor which may be considered by the Commission in this proceeding, except as it bears on the competitiveness of cellular service and the public interest. The Commission does not believe that the effect of deregulation on these businesses--whatever it may be--affects either of the statutorily prescribed criteria which the Commission must consider in this proceeding. Prohibiting packaging, as requested by the NCCA, would be anti-competitive and would result in higher CPE prices being paid by consumers.

Although the NCCA cited the FCC Notice of Proposed Rulemaking in CC Docket No. 91-34, In the Matter of Bundling of Cellular Customer Premises Equipment and Cellular Service, this proceeding offers little comfort to those opposing

bundling. The Notice of Proposed Rulemaking states at several places that the cellular equipment market is extremely competitive both locally and nationally. Indeed, the Notice identified benefits:

. . .[W]e tentatively conclude that there may be significant public interest benefits associated with bundling of cellular service and CPE. . .[B]undling or packaging of cellular CPE and cellular service and discounting practices can benefit consumers by offering them an expanded choice of goods and services at reduced cost. This, in turn, could encourage others to respond by developing innovative marketing practices as well, thus stimulating further competition in the cellular industry. Such competition would ultimately benefit consumers (Notice at 3).

The Commission concludes that tying arrangements are anti-competitive and not in the public interest. The Commission also concludes that, so long as consumers have the right to purchase service and CPE independently, packaging is in the public interest.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The Commission believes that exempting cellular carriers from regulation under the framework discussed below will increase the degree of competition. The elimination of the notice and filing requirements for tariff changes and new service offerings will give carriers more freedom to offer special promotions and discounts--in effect sales--and to experiment with different pricing strategies. Witness Steely testified that as the level of this activity increases by one carrier, it will likely be met by the competition from other cellular carriers. The Commission believes that the benefactor will be the using and consuming public for whom the range of choices will increase.

Both witness Hausman's econometric study and the testimony and exhibits offered by witnesses Patridge and Curran indicate that cellular prices are lower in unregulated states than in fully regulated states. Witnesses Jenkins and Curran testified that the cost of providing service was less in deregulated states. This fact was confirmed by witness Lilley's testimony. While cellular prices in North Carolina are presently competitive, the Commission concludes that exempting carriers from regulation holds the prospect for even lower prices for North Carolina consumers in the future.

While the cellular industry is experiencing tremendous growth, especially with the addition of the RSAs, the Commission concludes that cellular service is a nonessential, discretionary service. While the Commission can certainly not predict the future, a cellular phone is not yet a necessity of life in modern society, such as basic local exchange telephone service. Accordingly, the nature of the service itself does not alone warrant continued regulation by this Commission.

The Commission further concludes that retention of complaint jurisdiction over cellular carriers is not necessary to protect the public interest. Many of the complaints about cellular carriers have been about matters over which the Commission presently has no jurisdiction, i.e., the quality of reception or

effective coverage range. These matters fall within the exclusive jurisdiction of the FCC. Other compliance-type complaints concerning advertising or tariff matters would be eliminated and would be unnecessary under the framework outlined below. Consumers of cellular services will have available all of the usual remedies open in the competitive marketplace--the Better Business Bureau, the courts, and the Consumer Protection Division of the Attorney General's Office. Of even greater significance is the fact that consumers of cellular service will have available to them a remedy not available to consumers of monopoly services, they may choose another service provider.

The Commission concludes that cellular carriers should be exempt from all regulation by the Commission under Chapter 62 of the North Carolina General Statutes with the following exceptions:

1. The rates, terms, and conditions of interconnection between cellular carriers and local exchange companies and other telecommunications service providers regulated by the Commission; and,
2. The provision of land-to-land telecommunications services by cellular carriers.

Under this framework, certificates of public convenience and necessity will no longer be required by cellular carriers. No authority will be required from this Commission for cellular carriers to offer WACR or to resell long-distance service to their cellular customers. Cellular carriers will be exempt from all Commission rules concerning deregulated matters. Cellular carriers offering WACR service will continue to be obliged to pay access charges to LECs pursuant to their access tariffs in accordance with the Commission's Order in Docket No. P-100, Sub 109. Likewise, cellular carriers will continue to be governed by the provisions of the Commission's Order concerning interconnection between cellular carriers and the LECs contained in Docket No. P-100, Sub 79.

Cellular service is a rapidly growing industry and technological developments may dramatically affect it and other telecommunications services in the future. Accordingly, the Commission concludes that it should retain the right to reassert its jurisdiction over cellular carriers at any time upon petition of any interested party for good cause shown. While the Commission is satisfied that the public interest will best be served at the present time by lifting regulation of cellular carriers, retaining the right to reassert jurisdiction will ensure that the Commission is in a position to act if, in the future, competitive forces are not adequate to protect the public interest.

#### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The Commission concludes that the exemption from regulation outlined above should be extended to resellers of cellular service. There is presently only one active reseller in North Carolina. However, in a deregulated environment, other resellers may find North Carolina markets attractive. The legislation under which this proceeding was initiated did not directly address resellers. However, after having found that cellular service is competitive and that deregulation is in the public interest, the Commission concludes that the legislative purpose

would be frustrated were the Commission's exemption Order not extended to resellers and that it would be anomalous and illogical to regulate an entity reselling a deregulated service.

IT IS, THEREFORE, ORDERED as follows:

1. That effective as of the date of this Order all cellular carriers and cellular resellers be, and hereby are, exempt from all regulation by the North Carolina Utilities Commission pursuant to Chapter 62 of the North Carolina General Statutes except as provided below:

- a. Cellular carriers shall continue to be regulated by this Commission with respect to the rates, terms, and conditions of interconnection between cellular carriers and local exchange companies and other telecommunications service providers regulated by the Commission.
- b. The provision of land-to-land telecommunications services by cellular carriers, if any, shall continue to be regulated by the Commission.

2. The Commission retains the right to reassert its jurisdiction over cellular carriers at any time upon petition of any interested party for good cause shown.

3. That cellular carriers with applications for certificates of public convenience and necessity or other matters now deregulated file motions with the Commission to terminate these dockets.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of February 1992.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen  
Geneva S. Thigpen, Chief Clerk

(SEAL)



## APPENDIX 2

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**DOCKET NO. P-100, SUB 114**

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

In the Matter of:  
Exemption of Domestic Public Cellular  
Radio Telecommunications Service  
Providers from Regulation Under Chapter  
62 of the North Carolina General Statutes

Testimony of

**DR. JERRY A. HAUSMAN**

Professor of Economics  
Massachusetts Institute of Technology  
Department of Economics  
Building E52-271A  
Cambridge, Massachusetts 02139

Testimony of Jerry A. Hausman in  
Exemption of Cellular Telephone from Regulation  
State of North Carolina, Docket No. P-100, SUB 114

1. Q. Please state your name and business address.

A. My name is Jerry A. Hausman. I am Professor of Economics at the Massachusetts Institute of Technology in Cambridge, Massachusetts, 02139.

2. Q. Please state your educational background and areas of teaching and research.

A. I received an A.B. degree from Brown University and a B.Phil. and D. Phil. (Ph.D.) in Economics from Oxford University. My academic and research specialties are econometrics, the use of statistical models and techniques on economic data, and microeconomics, the study of consumer behavior and the behavior of firms. I teach a course in "Competition in Telecommunications" to graduate students in economics and business at MIT each year where I am also Director of the MIT Telecommunications Economics and Business Research Program. I was a member of the editorial board of the Rand Journal of Economics for the past 13 years. The Rand Journal is the leading economics journal of applied microeconomics and regulation. In December 1985, I received the John Bates Clark Award of the American Economic Association for the most "significant contributions to economics" by an economist under forty years of age. I have received numerous other academic and economic society awards. A copy of my curriculum vitae is attached as Exhibit 1.

3. Q. Please describe your prior experience in telecommunications research.

A. I have done significant amounts of research in the telecommunications industry. My first experience in this area was in 1969 when I studied the Alaskan telephone system for the Army Corps of Engineers. Since that time, I have studied the demand for local measured service, consumer demands for new types of telecommunications technologies, marginal costs of local service, and

costs and benefits of different types of local services, including the effect of higher access fees on consumer welfare. I have also studied the effect of new entry on competition in paging markets, telecommunications equipment markets, and interexchange markets. Other areas of telecommunications that I have recently done research in include the cellular telephone industry and the information services industry. I have previously published an article on the estimation of demand for cellular services: "Specifying and Testing Econometric Models for Rank-Ordered Data". (with Paul Ruud, Journal of Econometrics, 1987) Lastly, I have recently edited a book, Future Competition in Telecommunications (Harvard, 1989) and completed a study on information services, "Competition in the Information Market, 1990".

4. Q. Have you provided testimony before state or federal regulatory bodies on the topic of cellular telecommunications policy?

A. I testified in December 1985 and January 1986 before the California Public Utilities Commission (CPUC) about mobile communications, including cellular telephone competition (85-08-023). I submitted testimony to the CPUC during 1989 in the Commission proceeding in the Regulation of Cellular Radiotelephone Utilities (I.88-11-040). Recently during the past few months, I submitted testimony to the CPUC on further issues which have arisen in that investigation. (I.88-11-040) I have submitted testimony to the Connecticut Department of Public Utility Control on regulation of cellular telephone. (90-08-03) I have also submitted testimony to the U.K. government (Department of Trade and Industry) regarding likely future developments of proposed Personal Communications Networks (PCNs). I have submitted affidavits to the FCC and made presentations to the U.S. Department of Justice on matters related to cellular telephone regulation.

5. Q. What is the purpose of your testimony?

A. Cellular carriers in North Carolina have petitioned the North Carolina Utilities Commission (NCUC) to exempt Cellular Service providers from

regulation given that provision of cellular telephone services is competitive and that exemption from regulation is in the public interest. I recommend that the NCUC approve the joint petition of the cellular service providers. First, I analyze cellular markets in North Carolina, and I determine that they are competitive. Furthermore, I recommend that the NCUC exempt the facilities-based providers from regulation and allow market forces to determine the future competitive evolution of cellular telephone service in North Carolina because I find that regulation of cellular telephone is not in the public interest. Given the dynamic evolution of the cellular industry along with evolving new technologies such as PCN, consumers will be best served by the greatest possible use of market forces.

I. THE PROVISION OF CELLULAR SERVICE IS COMPETITIVE IN NORTH CAROLINA

A. The Competitive Structure of Cellular Markets and the Effects of Regulation

6. Q. Please describe the competitive structure of cellular telephone markets.

A. The overall market structure for cellular telephone service was created and is controlled by the FCC. Two wholesale carriers are licensed in each metropolitan market area (MSA) and are or will be licensed in each rural service area (RSA). The approach of permitting two carriers was a tradeoff between economies of scale that a single carrier would have versus expected competition between the two carriers. Retail distribution of cellular telephone service has considerably more participants. Each carrier has retail dealers and agents who sell cellular telephone services and equipment to the public.

7. Q. Please describe how competition for retail customers operates in cellular markets.

A. An important economic factor is that while only two competitors can

provide wholesale service in a given cellular market, any number of competitors can provide retail distribution. Indeed, since no barriers to entry exist at retail and the size of an efficient retail operation does not confer cost advantages or disadvantages, retail cellular markets are expected to be extremely competitive, with many of the features of markets which are referred to as perfectly competitive by economists. Experience to date has confirmed the high degree of competition in retail cellular markets.

8. Q. What are the primary economic factors which determine how competition works in cellular telephone service markets?

A. To the limited extent that cellular wholesale markets can be viewed as a classic duopoly (two supplier) situation given the FCC licensing of two facilities-based service providers, two fundamental features of the cellular wholesale market situation need to be kept in mind. First, economic theory has investigated duopoly market situations since the 19th century. Indeed, many famous theories of firm behavior under conditions of imperfect competition were first developed in models of two firms. Strategic interaction between two firms should be expected. A perfectly competitive outcome would not be expected, but competition between the two firms can still be quite significant. Second, regulation is also imperfect and will not be able to produce a perfect competition outcome. Claims to the contrary are not credible given the large divergences between prices and costs which are a feature of telecommunications regulation in every jurisdiction of the U.S. Instead, the appropriate question is whether a given regulatory framework can make consumers (not competitors or agents) better off, than either current regulation or overall elimination of regulation of cellular services.

9. Q. Does traditional economic theory need to be expanded to account for dynamic considerations as applied to cellular telephone markets?

A. The economic theory of duopoly is almost totally static. Thus the theory

assumes that the market structure and demand and supply parameters remain the same over time. However, the actual situation in cellular markets is extremely dynamic. In the face of this rapid change, regulatory intervention is even less likely to improve consumer welfare. For instance, innovations such as sophisticated cell splitting techniques and implementation of digital cellular systems will be the most important factors in assuring high quality cellular service. But regulation typically retards innovation as economic research has demonstrated, especially in the area of telecommunications.

10. Q. How has competition operated in cellular markets up to the current time period?

A. A high degree of competition between the cellular carriers has been observed along two dimensions. First, quality competition among cellular carriers has been extremely high. Techniques to reduce interference and decrease the number of blocked or dropped calls have been developed. These techniques have occurred from advances in engineering such as sectorization, overlay/underlay cell sites, cell enhancers, downtilted antennae, and dynamic cell power controllers. Cell-size reduction technologies are currently being developed and deployed. The number of cell sites has also increased significantly.

The main form of price competition among carriers to date has been competition to sign up new customers. Competition between cellular service providers in North Carolina has led to equipment discounts to customers of amounts between \$100-\$300. New customers have also been offered significant amounts of free air time. This price and free airtime competition has been greatest in states without cellular regulation. My interpretation of the situation is that regulation has hindered this form of price competition in states with regulation compared with other states without regulation or with more flexible regulatory frameworks.

B. Cellular Markets Are Competitive in North Carolina

11. Q. Do you find cellular markets in North Carolina to be competitive?

A. Cellular markets in North Carolina are quite competitive. I have analyzed cellular prices in North Carolina MSAs, including Greensboro, Raleigh-Durham, Wilmington, Charlotte, Hickory, Fayetteville, and Jacksonville, taking into account the population of each MSA, average income, and commuting times, and I find the prices to be quite competitive compared to other similar cellular MSAs in the U.S. Another indication of significant competition among the cellular carriers is the proliferation of service plans that has occurred in the past 12-18 months in North Carolina. Furthermore, customers seem quite satisfied with cellular service, as demonstrated by the very low level of customer complaints. In competitive markets where a customer can easily shift to a competitive supplier, I normally expect customers to be satisfied with the services they purchase.

C. Increased Competition to Cellular is Likely in the Next Few Years

12. Q. Is it likely that competitive services to cellular will start up within the next few years?

A. Yes, it seems very likely that Personal Communications Networks (PCNs) and CT2 (Telepoint) technology will begin in the U.S. over the next few years.<sup>1</sup> CT2 service is already being offered in the U.K. It is a one-way portable service which does not operate in cars, but it will operate on public transportation. Three PCNs have been licensed in the U.K. (in 1989) with network construction expected to begin soon, and the FCC has permitted experimental PCNs to begin operation in the U.S. Initially, PCN is expected to be a two-way portable service which will not operate from a moving car. While it is unclear what technological framework PCNs will use, I am quite certain that they will provide significant competition to cellular for at

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<sup>1</sup> Personal Communications Network (PCN) is often used interchangeably with Personal Communications Service (PCS) in articles in the press.



least portable (non-vehicular) uses which is by far the fastest growing segment of cellular usage. I expect PCN units to be lighter, lower power, and less expensive than current portable cellular units. They are likely to be connected to business PBXs in a convenient way and to provide a "universal" telephone number for each individual. Responses to the FCC Notice Of Inquiry in the past year found agreement that PCNs will provide considerable competition to cellular carriers. For instance, BellSouth, Pacific Telesis, and GTE who are among the five largest cellular carriers in the U.S. all responded to the FCC that PCN will provide competition to cellular. Increased pricing flexibility for cellular carriers will be required to meet the coming competition from CT2 and PCN. A recent market survey conducted by A.D. Little found that expected penetration for PCN would be between 3-9 times as large as current penetration of cellular with two-thirds of the potential subscribers stating that PCN will replace cellular service. Since the expected usage for PCN is expected to be much closer to usage levels of the public telephone network, cellular may well have to be able to carry much higher traffic loads than it currently does. For instance, carriers may find it desirable to price cellular service at different rates for different geographical cells as they currently price at different times of day to handle peak load calls. Complete pricing flexibility will allow the cellular carriers to experiment to find the best price schedules and to implement the price schedules which allow them to best compete with the new technologies.

13. Q. Beyond PCN and CT2 which are still experimental, has the FCC recently permitted increased competition to cellular?

A. Yes, on February 13, 1991 the FCC granted Fleet Call's request to allow it to use its specialized mobile radio (SMR) spectrum to offer digital Enhanced SMR (ESMR) in six cities, including New York City. While SMR has been previously limited to being a dispatch service, ESMR will provide service similar to cellular although ESMR will use the latest digital technology. Furthermore, the FCC has preempted state regulation of ESMR which will provide